

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION**

VITO A. PESCE, on behalf of	)	
himself and all others similarly	)	
situated	)	11-cv-1379
Plaintiff	)	
	)	Judge Robert W. Gettleman
v.	)	
	)	Magistrate Judge Morton Denlow
FIRST CREDIT SERVICES,	)	
INC. dba ACCOUNTS	)	
RECEIVABLE	)	

**COMBINED MOTION TO STAY OR EXTEND THE TIME TO COMPLY WITH DKT.  
ENTRY NOS. 31 and 41**

NOW COMES Defendant, FIRST CREDIT SERVICES, INC. dba ACCOUNTS RECEIVABLE TECHNOLOGIES (“FCS”), by and through its undersigned attorneys, and pursuant moves to stay or extend the time to comply with Dkt. No. 31 and 41:

1. Plaintiff alleges that Defendant violated The Telephone Consumer Protection Act, 47 U.S.C. § 227, (“TCPA”) by making an auto-dialed call to his cell phone without Plaintiff’s consent. Plaintiff does claim that he suffered any actual damages as a result of Defendant’s conduct. Rather, he seeks statutory damages of \$500 per call and possible treble damages.

2. As set forth by Defendant’s recently filed Motion to Dismiss and Memorandum of Law (dkt. nos. 44-45), this case should be dismissed pursuant to FRCP 12(b)(1) because Plaintiff lacks a actual injury as required by Article III of the Constitution. Defendant has also argued that Defendant is entitled to judgment as a matter of law pursuant to FRCP 12(c) because the Amended Complaint fails to identify any actual damages.

3. In light of the need to litigate the jurisdictional issue of standing, it would be improper for the parties to conduct further class based discovery in this case or present deponents

in accordance with dkt. entry no. 31 (Ex. A). Currently depositions are set to take place in New Jersey on September 31, 2011.

4. While Defendant has requested that a general discovery stay be issued in accordance with the motion to dismiss (dkt. no. 44), at the prompting of counsel for Plaintiff, Defendant believes that it is prudent to specifically move to stay compliance with dkt. entry nos. 31 and 41 (Ex. B).

5. Alternatively, Defendant needs additional time to prepare the list of skip traced members in accordance with the Magistrate Judge's order, dkt. no. 41.

WHEREFORE, Defendant respectfully request that this Honorable Court stay the time to comply with docket entry nos. 31 and 41. Alternatively, Defendant requests additional time to comply with docket entry no. 41.

By: /s/ James C. Vlahakis  
David M. Schultz  
James C. Vlahakis  
One of the Attorneys for Defendant  
FIRST CREDIT SERVICES, INC. dba  
ACCOUNTS RECEIVABLE TECHNOLOGIES

David M. Schultz  
James C. Vlahakis  
HINSHAW & CULBERTSON LLP  
222 N. LaSalle Street, Suite 300  
Chicago, Illinois 60601-1081  
Phone No: (312) 704-3000  
Fax No: (312) 704-3001  
[dschultz@hinshawlaw.com](mailto:dschultz@hinshawlaw.com)  
[jvlahakis@hinshawlaw.com](mailto:jvlahakis@hinshawlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on Sept. 15, 2011, I electronically filed the above document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

By: s/ James C. Vlahakis  
One of the Attorneys for Defendant